

1 Keith G. Bremer, State Bar No. 155920
kbremer@bremerwhyte.com
2 Benjamin Price, State Bar No. 267400
bprice@bremerwhyte.com
3 BREMER WHYTE BROWN & O'MEARA LLP
20320 S.W. Birch Street
4 Second Floor
Newport Beach, California 92660
5 Telephone: (949) 221-1000
Facsimile: (949) 221-1001

6 Attorneys for Plaintiff,
7 B.I.G. ENTERPRISES, a California corporation

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 B.I.G. ENTERPRISES, a California
corporation,

12 Plaintiff,

13 vs.

14 SELECT ELECTRIC, INC., a California
corporation; and DOES 1 through 100,
15 inclusive,

16 Defendants.

Case No. '15CV2635 BTM WVG

COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT

2. CONVERSION

**3. UNFAIR COMPETITION IN
VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE SECTION 17200**

4. DECLARATORY RELIEF

17
18
19 PLAINTIFF B.I.G. ENTERPRISES ("PLAINTIFF") hereby alleges as
20 follows:

21 **THE PARTIES**

22 1. PLAINTIFF is, and at all times herein mentioned was, a California
23 corporation authorized to conduct business in the State of California, with its
24 principal place of business located in Los Angeles County, State of California.

25 2. PLAINTIFF is informed and believes, and thereon alleges that SELECT
26 ELECTRIC, INC. ("DEFENDANT") is, and at all times herein mentioned was, a
27 California corporation authorized to conduct business in the State of California, with
28 its principal place of business located in San Diego County, State of California.

1 3. The true names and capacities, whether individual, corporate, or
2 otherwise, of Defendants DOES 1 through 100 inclusive are unknown to
3 PLAINTIFF, who therefore sues such defendants by fictitious names, and
4 PLAINTIFF will amend this Complaint to show their true names and capacities
5 when they have been ascertained.

6 4. PLAINTIFF is informed and believes, and on that basis alleges, that all
7 Defendants including the DOE defendants, are in some way responsible for the
8 matters complained of herein.

9 5. PLAINTIFF is informed and believes, and on that basis alleges, that at
10 all times relevant herein, each and every named and fictitiously named defendant
11 herein, was the agent, employee or joint venturer of each of the other remaining
12 defendants, and in doing the things herein alleged, acted within the scope, capacity,
13 authorization and direction of each of the remaining defendants, while in defendants'
14 employ, agency or joint venture.

15 **JURISDICTION AND VENUE**

16 6. This Court has jurisdiction of this action under 28 U.S.C. sections 1331
17 and 1338 because this action arises under the Copyright Act, 17 U.S.C. §§ 101 et.
18 seq. Venue is proper in this District under 28 U.S.C. section 1400(a) because
19 Defendants are subject to personal jurisdiction in this District.

20 **FACTUAL ALLEGATIONS**

21 7. PLAINTIFF is a premier manufacturer of security and revenue control
22 booths.

23 8. DEFENDANT specializes in construction of transportation
24 infrastructure projects.

25 9. PLAINTIFF is informed and believes, and thereon alleges that
26 DEFENDANT has been awarded a contract to provide certain construction services
27 relating to the project known as the SR-91 Corridor Improvement Project.
28 PLAINTIFF is informed and believes, and thereon alleges that included within the

1 services DEFENDANT agreed to provide is the design and construction of two
2 Manned Toll Utility Buildings ("TUB").

3 10. In the summer of 2014, PLAINTIFF and DEFENDANT discussed the
4 possibility of PLAINTIFF constructing the TUB buildings. On or about July 18,
5 2014, DEFENDANT submitted a letter of intent correspondence to PLAINTIFF in
6 which DEFENDANT stated that upon creation of a final design DEFENDANT
7 would issue a formal purchase order for the construction of the TUB buildings.

8 11. At the time, PLAINTIFF indicated its interest in providing the design
9 and construction services based on the general scope of work communicated by
10 DEFENDANT to PLAINTIFF.

11 12. Over the next several months after the letter of intent was sent by
12 DEFENDANT, PLAINTIFF submitted a series of drawings and plans for the
13 construction of the TUB buildings. Once those plans were nearly final and were
14 formally submitted to DEFENDANT, they were approved by the first design
15 professional that reviewed them. Not content with this approval, DEFENDANT
16 requested that a second design professional approve the plans. When this was done,
17 DEFENDANT then requested that a third design professional approve the plans, this
18 time a design professional of DEFENDANT's choosing. When the review by the
19 third design professional was completed, the third design professional had requested
20 dramatic changes to the plans which far exceeded the scope of the work originally
21 described by DEFENDANT. When these changes were reported to PLAINTIFF,
22 PLAINTIFF promptly advised the revised scope of work exceeded PLAINTIFF's
23 capabilities and PLAINTIFF could not work towards completion of a contract with
24 that revised scope of work.

25 13. The copyright as to the plans created and submitted by PLAINTIFF to
26 DEFENDANT relating to the TUB buildings is owned by PLAINTIFF.
27 Notwithstanding the same, on September 24, 2015 DEFENDANT advised
28 PLAINTIFF it would be using the plans with or without PLAINTIFF's consent.

1 PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT has
2 been using PLAINTIFF's plans to work towards construction of the TUB buildings
3 either on its own or with the help of third party subcontractors.

4 14. DEFENDANT's infringing conduct has deprived PLAINTIFF of the
5 benefits of ownership of the copyright of the plans, and has caused or will continue
6 to cause irreparable harm to PLAINTIFF unless DEFENDANT's conduct is
7 enjoined.

8 **FIRST CAUSE OF ACTION**

9 **(Copyright Infringement – As to All Defendants)**

10 15. PLAINTIFF repeats and re-alleges the allegations contained in
11 Paragraphs 1 through 14, inclusive, and incorporates the same as though set forth in
12 full herein.

13 16. DEFENDANT has knowingly and willfully directly copied and
14 reproduced the plans to construct the TUB buildings for its own commercial
15 purposes.

16 17. DEFENDANT did not obtain written permission or any license from
17 PLAINTIFF for the reproduction and distribution of the plans.

18 18. PLAINTIFF is informed and believes that DEFENDANT's infringing
19 acts have been performed with knowledge of PLAINTIFF's copyrights and that such
20 acts were committed intentionally and willfully.

21 19. By reason of DEFENDANT's willful infringement of PLAINTIFF's
22 copyrights, PLAINTIFF has suffered substantial injury, loss, and damage in an
23 amount to be proven at trial and DEFENDANT has unlawfully and wrongfully
24 derived and will continue to derive income from its infringing acts.

25 20. If DEFENDANT's wrongful unauthorized use and distribution of the
26 plans continues, PLAINTIFF will continue to suffer irreparable harm of a continuing
27 nature for which there is no plain, speedy, or adequate remedy at law.

28 ///

1 21. DEFENDANT's acts of copyright infringement will continue unless
2 DEFENDANT is enjoined from committing further wrongful and infringing acts.

3 22. PLAINTIFF has also incurred and will continue to incur attorney's fees
4 and costs as a result of DEFENDANT's infringement.

5 **SECOND CAUSE OF ACTION**

6 **(Conversion – As to All Defendants)**

7 23. PLAINTIFF repeats and re-alleges the allegations contained in
8 Paragraphs 1 through 22, inclusive, and incorporates the same as though set forth in
9 full herein.

10 24. PLAINTIFF has an ownership interest in plans to construct the TUB
11 buildings.

12 25. PLAINTIFF is informed and believes, and thereon alleges that
13 DEFENDANT intentionally used the plans for its own commercial purposes without
14 securing the consent of PLAINTIFF.

15 26. By using the plans for its own commercial purposes without securing
16 the consent of PLAINTIFF, DEFENDANT assumed control or ownership of the
17 plans, and applied them to its own use.

18 27. As a proximate result of DEFENDANT's conversion, PLAINTIFF has
19 been generally and incidentally damaged in an amount to be proven at the time of
20 trial.

21 28. Furthermore, in doing the things herein alleged, DEFENDANT acted
22 willfully and with the intent to cause injury to PLAINTIFF. Consequently,
23 DEFENDANT is guilty of malice and/or oppression in conscious disregard of
24 PLAINTIFF's rights, thereby warranting an award of punitive and exemplary
25 damages in an amount to punish DEFENDANT and deter others from engaging in
26 such similar misconduct.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE OF ACTION
(Unfair Competition in Violation of California Business and Professions Code
Section 17200 – As to All Defendants)

29. PLAINTIFF repeats and re-alleges the allegations contained in Paragraphs 1 through 28, inclusive, and incorporates the same as though set forth in full herein.

30. The California Unfair Business Practices Act defines unfair business competition to include any “unlawful” or “fraudulent” business act or practice.

31. As described herein, PLAINTIFF is informed and believes, and thereon alleges that the DEFENDANT is using PLAINTIFF’s plans for the construction of the TUB buildings in violation of the Copyright Act.

32. DEFENDANT’s acts and practices described herein constitute unfair and unlawful business acts and practices within the meaning of the California Unfair Business Practices Act as DEFENDANT’s acts and practices herein described offend established public policy, because the harm they cause to consumers outweighs any benefits associated with those practices, and because the acts mislead consumers.

33. As a result of DEFENDANT’s unfair business practices, PLAINTIFF is entitled to injunctive relief, restitution, and disgorgement of profits obtained by DEFENDANT as a result of its unfair business acts and practices.

FOURTH CAUSE OF ACTION
(Declaratory Relief – As to All Defendants)

34. PLAINTIFF repeats and re-alleges the allegations contained in Paragraphs 1 through 33, inclusive, and incorporates the same as though set forth in full herein.

35. An actual controversy has arisen and now exists between PLAINTIFF and DEFENDANT regarding (i) whether DEFENDANT may use PLAINTIFF’s plans for construction of the TUB buildings without PLAINTIFF’s consent, (ii) whether PLAINTIFF and DEFENDANT have a contractual relationship whereby

1 PLAINTIFF is obligated to construct the TUB buildings at issue, and (iii) whether
2 PLAINTIFF is in breach of any contractual relationship by not constructing the TUB
3 buildings at issue with the scope of work expanded by DEFENDANT.

4 36. PLAINTIFF desires a judicial determination of its rights and duties, and
5 a declaration as to (i) whether DEFENDANT may use PLAINTIFF's plans for
6 construction of the TUB buildings without PLAINTIFF's consent, (ii) whether
7 PLAINTIFF and DEFENDANT have a contractual relationship whereby
8 PLAINTIFF is obligated to construct the TUB buildings at issue, and (iii) whether
9 PLAINTIFF is in breach of any contractual relationship by not constructing the TUB
10 buildings at issue with the scope of work expanded by DEFENDANT.

11 37. A judicial declaration is necessary and appropriate at this time under the
12 circumstances in order that PLAINTIFF may ascertain its rights and duties with
13 respect to the plans and any contractual relationships with DEFENDANT.

14 38. To date, PLAINTIFF has been generally and incidentally damaged in an
15 amount to be proven at the time of trial.

16 **PRAYER**

17 WHEREFORE, PLAINTIFF prays for judgment against Defendants as
18 follows:

19 ON THE FIRST CAUSE OF ACTION:

20 39. For injunctive relief pursuant to 17 U.S.C. §502, including temporary,
21 preliminary, and permanent injunctive relief, preventing Defendants from the
22 unlawful conduct as described herein;

23 40. For actual or statutory damages and Defendants' profits pursuant to 17
24 U.S.C. § 504;

25 41. For enhanced damages for willful infringement pursuant to 17 U.S.C. §
26 504;

27 42. For prejudgment and post-judgment interest in the maximum amount
28 allowed by law;

- 1 43. For attorney's fees pursuant to 17 U.S.C. § 505;
2 44. For all costs of suit incurred herein, if appropriate; and
3 45. For such other and further relief as the court may deem just and proper.

4 ON THE SECOND CAUSE OF ACTION:

- 5 46. For general and incidental damages in an amount to be proven at the
6 time of trial;
7 47. For prejudgment and post-judgment interest in the maximum amount
8 allowed by law;
9 48. For punitive and exemplary damages;
10 49. For all costs of suit incurred herein, if appropriate; and
11 50. For such other and further relief as the court may deem just and proper.

12 ON THE THIRD CAUSE OF ACTION:

- 13 51. For restitution;
14 52. For disgorgement of profits;
15 53. For injunctive relief, including temporary, preliminary, and permanent
16 injunctive relief, preventing Defendants from the unlawful conduct as described
17 herein;
18 54. For prejudgment and post-judgment interest in the maximum amount
19 allowed by law;
20 55. For all costs of suit incurred herein, if appropriate; and
21 56. For such other and further relief as the court may deem just and proper.

22 ON THE FOURTH CAUSE OF ACTION:

- 23 57. For a declaration that DEFENDANT may not use PLAINTIFF's plans
24 for construction of the TUB buildings without PLAINTIFF's consent;
25 58. For a declaration that PLAINTIFF and DEFENDANT have no
26 contractual relationship whereby PLAINTIFF is obligated to construct the TUB
27 buildings at issue;

28 ///

1 59. For a declaration that PLAINTIFF is not in breach of any contractual
2 relationship by not constructing the TUB buildings at issue with the scope of work
3 expanded by DEFENDANT;

4 60. For prejudgment and post-judgment interest in the maximum amount
5 allowed by law;

6 61. For all costs of suit incurred herein, if appropriate; and

7 62. For such other and further relief as the court may deem just and proper.

8 **DEMAND FOR JURY TRIAL**

9 PLAINTIFF hereby demands a trial by jury.

10 Dated: November 23, 2015

BREMER WHYTE BROWN & O'MEARA
LLP

13 By: /s/ Benjamin L. Price

14 Keith G. Bremer
15 Benjamin Price
16 Attorneys for Plaintiff
17 B.I.G. ENTERPRISES, a California
18 corporation